TO: New Hampshire Town & City Election Officials

FROM: William M. Gardner, New Hampshire Secretary of State

Kelly A. Ayotte, New Hampshire Attorney General

DATE: October 27, 2008

RE: Memorandum regarding Election laws, Procedures and Potential Issues for

November 4, 2008 Presidential/General Election

I. Introduction:

This year's general election on November 4, 2008 will be a momentous event for our state and our country. New Hampshire is considered a "battleground" state and could determine the outcome of the Presidential Election. Accordingly, the Secretary of State's Office, the Attorney General's Office and local election officials throughout the state have been steadily working for several months in preparation for this upcoming election.

The number of voters is expected to be higher than any other election in history. High voter turnout will require more election officials working the polls and greater assistance from state officials than previous elections. As the Attorney General's Office has done with past state and federal elections, we will have attorneys, investigators and county sheriffs strategically positioned throughout the State to inspect polling places and to provide assistance to local election officials when such assistance is requested and/or required.

This memorandum examines and provides guidance to applying certain election laws and procedures and responding to election issues that have historically arisen during Presidential Elections. Please review this memorandum, and if you have any questions feel free to contact the Secretary of State or the Attorney General's Office.

II. Election Laws, Procedures and Potential Issues:

A. Appointed Election Officials – Extra Staff on Election Day

Moderators, Town and City Clerks and Supervisors of the Checklist, be prepared and appoint persons to provide assistance to you on Election Day.

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1. Appointing Election Officials RSA 658:7 empowers the Moderator, the Town Clerk and the Supervisor of the Checklist to appoint assistants to them in the performance of their duties on election day. If lines develop during the election that require voters to wait excessive periods of time to vote, assistants should be recruited and appointed to increase the number of people who can be registered, checked-in, and allowed to vote at one time. In order to provide such assistance, the Moderator, the Town Clerk or the Supervisor of the Checklist respectively are required to administer the oath of office for any person appointed by such election official. The oath is as follows:

I,	, do solemnly swear or affirm, that I will
bear faith and true allegiance to the Unite	d States of America and the State of
New Hampshire, and will support the Co	nstitution thereof. So help me God.
I,	_, do solemnly and sincerely swear and
affirm that I will faithfully and impartiall	y discharge and perform all duties
incumbent upon me as	,
according to the best of my abilities, agre	eably to the rules and regulations of this
Constitution and laws of the State of New	Hampshire. So help me God.

This oath comes from Part II, Article 84 of the New Hampshire Constitution. All election officials and assistant election officials should have a proper badge from the municipality.

- 2. <u>Election Official Qualifications and Term</u> The fundamental requirement of any election official is that he or she is at least 17 years of age on the day he or she is to perform the election duties. RSA 658:7-a. Any election official appointed under the above oath is required to be domiciled in the town or ward where the person is appointed and be a United States citizen. The term of office for this assistant election official shall begin at the point that he or she is appointed on Election Day and shall terminate at the end of the election. RSA 658:8. While people who do not meet these requirements cannot serve as official assistants, they may be recruited to perform functions like ensuring voters wait in the correct line or helping voters prepare voter registration forms while waiting in line and prior to reaching the supervisor's table.
- 3. Additional Polling Places For towns that have additional places, please be advised that the assistant Town Clerk and the assistant Moderator appointed to work in such additional polling place is required to have their domicile in the voting district covered by the additional polling place where they will serve. RSA 658:14. The powers and duties of the assistant Moderator and assistant Clerk shall be the same as those of the Moderator and the Clerk at the central polling place except as otherwise provided in the election laws. Other than the assistant Town Clerk, assistant Moderator and the Inspectors of the Election (see below) having a domicile within the additional polling

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place, it is not required that the other appointed election officials serving in the polling place have their domicile within that voting district.

- 4. <u>Inspectors of the Election (Ballot Clerks) Appointment</u> Inspectors of the election, often called ballot clerks, are appointed by the political committee of the Republican or Democratic party between September 15 and October 15 of 2008. If the number of voters qualified to vote at a polling place exceeds 2000, then each political committee may appoint an additional inspector of the election for each 1500 qualified voters or a fraction thereof in excess of 2000. The political committees may also appoint such additional inspectors, equally divided between said two political parties, as the Moderator considers necessary for the efficient conduct of the election. If the political committees do not provide the town, ward or city clerk with the inspector of the election appointments by October 15, 2008, then the appointment shall be made by the Selectmen of the town or ward in equal numbers from said two political parties. RSA 658:2.
- 5. <u>Qualifications of Inspectors of the Election</u> The inspectors of the election shall be registered to vote at the polling place where they serve. RSA 658:3.
- 6. Oath of Office and Term of the Inspector of the Election Each inspector of the election shall be sworn to the faithful performance of his or her duties and shall hold office for two years from November 1 in the year in which he or she is appointed or until a successor is appointed and qualified. RSA 658:4. In the event that no appointment is made by the Selectmen or the political committees for inspectors of the election, six qualified voters of the town or ward may petition a justice of the municipal or district court to appoint the inspectors. RSA 658:6. In the event that there are an insufficient number of inspectors of the election/ballot clerks to operate the polling place, the moderator may appoint any election official to serve in such capacity. See RSA 659:7.

B. Testing Accuvote Counting Machine

The Secretary of State has sent Fifty (50) extra ballots with your official ballots for use in testing the voting machines to make sure they count the votes correctly on Election Day.

It is important that a thorough test of each machine be done as soon as the ballots are received, opened and verified in accordance with RSA 656:20, II.

NOTE: Be sure to remove the TEST ballots from the ballot box before resealing. Mark each TEST ballot with a big red "TEST" in the area above the Secretary of State's signature, so there is no chance of them being confused with the official ballots.

To adequately test the computer program:

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Use these extra ballots marked "TEST" (and any additional ballots you feel are necessary) by:

- Marking the ballots in such a way to demonstrate at least one vote for each candidate on the ballot—To get an accurate test, do not give each candidate the same number of votes;
- Overvotes:
- Undervotes;
- Write-ins, and
- Any possible combination that you think a voter may indicate on a ballot so that your test will be thorough and complete;
- On ballots where a candidate is listed more than once for the same office, test some ballots by marking that candidate in both places to determine that they only receive ONE vote per ballot.
- Be sure to mark any additional ballots you use for testing with "TEST".

Keep a hand-written tally sheet during the course of your testing and if the program is working correctly, the number of votes on your tally sheet should correspond with the vote on your computer printout. Many clerks use a blank ballot marked "test tally" for this purpose.

Run 50 ballots through the machine top first with the offices/candidates face up. Then run a total tape. Re-run the 50 ballots bottom first with the offices/candidates face up. Then run a second total tape. Re-run the 50 ballots top first with the offices/candidates face down. Then run a third total tape. Re-run the 50 ballots a final time bottom first with the offices/candidates face down. Then run a final total tape. The results on each total tape must be identical. It is essential to complete the test in this fashion to ensure that both the upper and lower read heads are functioning properly and that the machine is programmed properly to recognize the ballot in any orientation.

Any computer problems, including tabulation errors and mechanical failures must be reported to the Secretary of State and to LHS immediately.

A copy of the computer printout and the tally sheet signed by the town or city clerk must be mailed at once to the Secretary of State. You may either print a second tape using the ballot counting machine or you may photocopy the tape. Do not send your "TEST" ballots. If your test results do not match your hand count results contact the Secretary of State's Office and LHS immediately by phone.

After the testing is complete, be sure to seal your "TEST" ballots, test reports and test results in a sealed container and place it in a secure location for future reference.

Be certain to leave the machine plugged in for a period of time to recharge the backup batteries and then test the back-up batteries on the Accuvote machine prior to Election Day.

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C. Waiting Lines

Moderators should develop a plan with sufficient staff to keep voting lines no longer than fifteen minutes. Please be advised that waiting lines may be more of an issue this year than in previous years. For the first time in 110 years, New Hampshire has removed the straight-ticket voting option on the ballot. Voters will no longer be able to check off one box on a ballot to complete voting. Instead, voters wishing to vote an entire ballot will have to individually choose a candidate for each race on the ballot. This will undoubtedly result in voters spending more time in the voting booth and may result in longer lines, especially if the polling place is not equipped with the required number of voting booths and screens. With the elimination of the straight ticket, we request that Moderators and/or their assistants monitor the voting line and the structure of the polling place to be certain the waiting lines are kept to an absolute minimum. Setting up additional voting booths or screens and appointing additional assistants may help resolve long waiting lines. Please do what is necessary to keep lines to a minimum and no longer than 15 minutes.

1. <u>Voting booths/screens</u>

All polling places in New Hampshire for the upcoming election must have a minimum of 1 voting booth/screen for every 100 voters on the checklist. See RSA 658:9. To help achieve this ratio, polling places may be equipped with voting screens, up to half the amount of polling booths required. Thus, if a town has 1000 voters on the checklist, the town's polling place may have 5 voting booths and 5 voting screens and be in compliance with New Hampshire law.

2. Voting Line and Voter Registration Line

Moderators should establish a minimum of two lines entering the polling place - one line for registered voters and one line for unregistered voters. The two lines should be labeled to provide voters guidance. We recommend that in large polling places, Moderators appoint assistants to greet voters as they enter the polling place to guide voters into the proper line. If long lines form, an election official or other assistant should be placed at the end of each line to ensure that persons get into the correct line.

3. Election Day Registration

New Hampshire provides Election Day registration. To help facilitate this process and to help alleviate line congestion, this Office recommends that the Supervisors of the checklist appoint assistants under RSA 658:7, as set forth above, to assist them in registering new voters. It may be helpful to have clipboards available to provide persons in line to complete the voter registration form prior to arriving at the registration table. A person whose name has previously been removed from the voter checklist may, if qualified, re-register and vote on Election Day.

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D. Vehicle Access to Polling Place and Parking Areas

Moderators should have assistants periodically inspect vehicle access to the polling place. While the voting line in a particular polling place may not be long, the line of vehicles attempting to access the parking lot of the polling place could be a significant problem. If vehicle access could be a problem at a particular polling place, Moderators and Selectmen should work with local police to address any traffic congestion that could occur. To the extent that vehicles are lined up to gain access to a particular polling place and polls are to close within one hour, Moderators should have assistants monitor the vehicle line. At the poll closing hour, the assistant must locate the last car in line and identify it as such to permit the voter(s) in the vehicle their right to vote.

Each polling place should have adequate parking to allow voters to park conveniently while they vote. A common problem throughout the State is that individuals parking vehicles bearing electioneering messages and even the folks that work the electioneering area occupy an inappropriate amount of the most convenient parking. Several Moderators have reported that in the past, campaigns will park large vehicles in the closest spaces the day before the election. If this is an issue in your community, we recommend that you work with your Selectmen and your Police Chief to adopt a temporary ordinance that sets a time limit for parking in a sufficient number of spaces near the polling place to ensure that voters have parking.

E. Polling Places Open to the Public

Polling places are open to the public to enter and observe the process of voting and registering to vote. Any person, who observes the voting process must remain outside the guardrail, must not be permitted to see any completed voter registration forms and is not permitted to disrupt the process of voting. People observing the election may use video or audio tape devices. Video taping of the voter registration process should not allow taping of non-public information on the voter registration form, affidavits, driver's licenses or other documents used for proof of qualifications.

F. Challengers

RSA 666:4 creates a distinct position of "challenger." The Democratic and Republican Party may each designate, in writing, a "challenger" for each polling place (one for each checkin station – usually a section of the alphabet in larger municipalities). In order to qualify as a challenger, a person must present the Moderator with a written statement identifying him or her as a challenger, signed by the party chairman. The challenger must be positioned where the Challenger can see and hear each voter check-in.

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G. Challenges to a Voter

Any voter at any state election may, with due cause, challenge any other voter offering to vote at such election. We recommend that any voter who makes a challenge to any other voter be required to complete the Challenged Voter Form available at http://nhvotes.sos.nh.gov and in the Election Procedure Manual. If you cannot access this form, please contact the Secretary of State.

After receipt of a challenge to a voter, the moderator shall not receive the vote of the person so challenged until he/she shall sign and give to the moderator an affidavit in the following form:

I, ______, do solemnly swear (or affirm) that I am the identical person whom I represent myself to be, that I am a duly qualified voter of this town (or ward) and have a legal domicile therein.

RSA 659:27. The ballot of a voter challenged in person is not marked in any manner to indicate a challenged ballot. RSA 659:36.

Voters may be challenged for the following reasons:

- The person seeking to vote is not the individual whose name he or she has given;
- The person seeking to vote has already voted in the election;
- The person seeking to vote is disqualified as a voter by conviction of a willful violation of the election laws;
- The person seeking to vote is under 18 years of age;
- The person seeking to vote is not a United States Citizen;
- The person seeking to vote is not domiciled in the town or ward where he or she is seeking to vote;
- The person seeking to vote is a convicted felon who is currently sentenced to incarceration (would apply to a prisoner on work release or to an escapee).

A foreclosure notice in the name of a particular voter is not a proper basis for a challenge. Mail sent to the voter at the mailing address listed on the checklist which is marked by the United States Post Office indicating that the voter has moved is a proper basis for a challenge. For more information on challenges, please review http://nhvotes.sos.nh.gov and in the Election Procedure Manual. For Absentee Challenges see below.

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H. Voter Suppression/Intimidation

The 2008 session of the legislature amended RSA 659:40 to provide additional protections for voters by establishing additional felony crimes for voter intimidation and suppression. It is a felony for a person to:

- directly or indirectly bribe any person not to register to vote or any voter not to vote or to vote for or against any question submitted to voters or to vote for or against any ticket or candidate for office at any election;
- use or threaten force, violence, or any tactic of coercion or intimidation to knowingly induce or compel any other person to vote or refrain from voting, vote or refrain from voting for any particular candidate or ballot measure, or refrain from registering to vote;
- No person shall engage in voter suppression by knowingly attempting to prevent or deter another person from voting or registering to vote based on fraudulent, deceptive, misleading, or spurious grounds or information. Prohibited acts of voter suppression include:
 - Challenging another person's right to register to vote or to vote based on information that he or she knows to be false or misleading;
 - Attempting to induce another person to refrain from registering to vote or from voting by providing that person with information that he or she knows to be false or misleading;
 - Attempting to induce another person to refrain from registering to vote or from voting at the proper place or time by providing information that he or she knows to be false or misleading about the date, time, place, or manner of the election.

I. Voting Fraud

The 2006 session of the Legislature amended RSA 659:34 to provide additional protections against people committing voting fraud. It is a felony for a person to vote more than once for any office or measure in the same election. RSA 659:34-a explicitly makes it a felony to vote in two different states in the same election. Voting in a different state in the presidential primary and then establishing a voting domicile in New Hampshire and voting in the general election in New Hampshire does not violate this statute, the presidential primary and general elections are different elections.

It is a class A misdemeanor to:

make a false material statement regarding qualifications as a voter to an election officer
or to submit a voter registration form, an election day registration affidavit, a citizenship
affidavit, a domicile affidavit, or an absentee registration affidavit containing false
material information regarding qualifications as a voter when registering to vote; when
obtaining an official ballot; or when casting a vote by official ballot;

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- apply for a ballot in a name other than his or her own;
- applies for a ballot in his or her own name after he or she has voted once;
- votes for any office or measure at an election if such person is not qualified to vote as provided in RSA 654; or
- gives a false name or answer if under examination as to his or her qualifications as a voter before the supervisors of the checklist or moderator.

J. Loss of Voting Rights for Life

The New Hampshire Constitution at Part 1, article 11, provides that "No person shall have a right to vote under the constitution of this state who has been convicted of . . . any willful violation of the election laws of this state or of the United States" A willful violation of the laws prohibiting voter intimidation, voter suppression, or voting fraud can result in the person loosing his or her right to vote for life. Only the New Hampshire Supreme Court can reinstate a person's right to vote once it has been revoked pursuant to this constitutional provision.

K. Processing Absentee Ballots

Processing of previously received absentee ballots shall begin at 1:00 p.m. The processing of the absentee ballots shall not unnecessarily interfere with normal voting procedures, nor shall the polls be closed at any time during the processing of such ballots. Absentee ballots which are received after 1:00 p.m. and prior to 5:00 p.m. shall be processed as soon after receipt as possible. Under no circumstances shall absentee ballots be counted prior to the closing of the polls, they may however be inserted into the ballot counting machine or ballot box in the same manner as election day ballots. RSA 659:49.

The moderator or the moderator's designee may authorize the opening of absentee ballot return envelopes on election day prior to the time established for processing absentee ballots in RSA 659:49 (1:00pm), provided that the opening of the return envelopes occurs in public with notice of the time and place. The affidavit envelope containing the ballot shall not be removed from the return envelope at such time, and the return envelope containing the affidavit envelope shall be secured until it is processed pursuant to RSA 659:50. This section shall not apply to return envelopes previously opened pursuant to RSA 657:21.

The moderator shall begin processing absentee ballots by clearly announcing that he is about to open the envelopes which were delivered to him. The moderator shall then remove the affidavit envelope containing the ballots of each absentee voter and shall compare the signature on the affidavit envelope with the signature on the application for the ballot. In determining whether the signatures match, the moderator should decide whether it is more likely than not that the same person signed both forms. The more likely than not standard does not require a perfect match.

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If the (1) name of the voter is on the checklist; (2) affidavit on the envelope appears to be properly executed; (3) signature on the affidavit appears to be executed by the same person who signed the application; and (4) signatures appear to be the signatures of a duly qualified voter who has not voted at the election; then the moderator shall publicly announce the name of the absentee voter. If there is no challenge to casting the absentee ballot, the moderator shall deposit the absentee ballot in the ballot box or vote counting machine.

L. Challenges to Absentee Ballots

All absentee ballots are subject to challenge after the moderator publicly announces the name of the absentee voter but not after the ballot is removed from the envelope. A person who makes a challenge shall state the reason for the challenge. RSA 659:51. A challenge to an absentee ballot on the basis that the person who voted absentee is present in the town or ward and available to vote in person, is not a valid basis for a challenge. Allegations that a person wrongfully voted absentee and should have voted in person should be filed with the Attorney General's Office.

If the ballot is challenged, the moderator shall write on the affidavit envelope containing the ballot the word "challenged" and the name and address of the person who makes the challenge and the basis of the challenge. Attaching a completed challenged voter form to the affidavit envelope can satisfy this requirement.

The moderator shall then determine if the challenge to the ballot is well grounded. If the moderator decides the challenge is well grounded, he shall not open the envelope but shall preserve it with the other ballots cast at the election as provided in RSA 659:101. If the moderator decides that the challenge is not well grounded, he shall open the affidavit envelope so the affidavit thereon is not destroyed and proceed first to mark on the reverse of the folded ballot the corresponding challenge number as previously marked on the envelope. He shall then proceed to deposit the ballot as provided in RSA 659:52.

M. Posting Instructions to Voters, Sample Ballot and Purity of Elections Poster

The town or city clerk shall make certain that three (3) copies of the instructions for voters have been posted outside the guardrail and one copy is in each voting booth and voting screen. RSA 658:25

The town or city clerk shall post sample ballots outside the guardrail. RSA 658:26.

The town or city clerk shall post purity of election statutes in a public area outside the voting area. RSA 658:29.

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N. Maintaining Order at the Polling Place

Moderators have authority to keep order at the polling place. If any observer or "challenger" is disruptive and fails to cease their disruptive behavior after being warned, Moderators may direct the individual to leave the polling place. If the person refuses, have law enforcement remove the individual. The following statutes may assist a moderator and local law enforcement in removing a disruptive person from the polling place:

Disorderly Conduct, RSA 644:2 Interfering with Voter, RSA 659:37 Bribing; Intimidation of voter, RSA 659:40 Disorder, RSA 40:8 Duty of Police, RSA 40:9

Note, RSA 659:41 makes the assault of an election officer a felony and RSA 659:45 requires Moderators to notify the Attorney General's Office of any violation of RSA 659:34 through 659:44.

O. Electioneering

No electioneering shall occur inside areas of the building used as the polling place. RSA 659:43. No election official shall engage in any electioneering inside the polling place. RSA 659:44. No person who is a candidate for office or who is representing or working for a candidate shall distribute any campaign materials or perform any electioneering activities or any activity which affects the safety, welfare and rights of voters within a corridor 10 feet wide and extending a distance from the entrance door of the building as determined by the moderator where the election is being held. RSA 659:43

Moderators must establish a "no electioneering" zone that is at least ten feet wide and which reaches out to the sidewalk or parking lot where voters gain access to the polling place. See RSA 659:43-RSA 659:44-a. Voters should be able to enter and exit the polling place without having to walk through an electioneering gauntlet. Traffic cones, saw horses, tape, or rope is often effective in establishing clear lines in identifying the boundaries of the "no electioneering" zone.

We recommend that Moderators establish and uniformly enforce a policy regarding what can be worn or displayed inside the polling place. If you have a policy that requires voters to remove buttons or cover clothing that contain electioneering messages, we suggest you post a sign to that effect near the entrance door to the building. Moderators must, however, prevent the following individuals from displaying electioneering messages: those who are working, observing, acting as challengers, or voters who choose to remain and socialize after voting.

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Direct these individuals to leave or to remove buttons or cover clothing that contains electioneering messages.

P. Political Advertising

All polling places in New Hampshire are public. To the extent that a town or ward uses a private location to operate a polling place (like a church), such grounds that have been rented, leased or otherwise occupied for Election Day are deemed public property and RSA 664:17 applies.

RSA 664:17 establishes a general rule that political advertising may not be placed on or affixed to public property. Decisions by the United States Supreme Court and federal circuit courts have upheld the constitutionality of laws in other states prohibiting electioneering within 100 feet of the entrance to the poll, but have struck down laws in other states prohibiting electioneering within 500 feet. We, therefore, understand the constitutional right to make political speech and to afford some limited right to electioneer near polling places. We recommend that Moderators establish a zone where electioneering is permitted and signs may be held that is within sight and sound of the entrance to the polls.

While persons have a right to hold a political sign within the electioneering zone outside a polling place, it has been a policy in many towns and wards throughout New Hampshire to permit persons to leave political signs unattended in those electioneering zones. In other towns Moderators have established and enforced a firm policy requiring that all signs be attended, and that there must be a person holding or standing with any sign located on public property. To the extent that a moderator permits political signs to be left unattended within the electioneering zone on public property outside a polling place, we recommend that the Moderator establish, and uniformly enforce a policy that treats all persons and the placement of political signs equally.

Also, please note that RSA 664:17 provides that "no person shall remove, deface, or knowingly destroy any political advertising which is placed on or affixed to public property or any private property except the owner of the property, persons authorized by the owner of the property, or a law enforcement officer removing improper advertising. Political advertising placed on or affixed to any public property may be removed by state, city, or town maintenance or law enforcement personnel."

O. November 4, 2008 Federal/State Election Ballot Types

Ballot types are created for the following voters:

- Election day Ballot
- Absentee Voter

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- Overseas Citizen Voter (Federal Ballot Only)
- Uniformed & Overseas Citizen Absentee Voter Act ("UOCAVA")
- Accessible Voting System Voter
- Federal Write-In Absentee Ballot ("FWAB")

R. Ballots to Remain Inside the Guardrail and the Use of Absentee Application/Ballots on Election Day

No Election Day ballot may be removed from the area within the guardrail while voting or counting is occurring. Removing a ballot from the guardrail is a misdemeanor. RSA 659:38. No voter can show anyone how the voter marked his or her ballot. Improperly showing someone how you vote is a misdemeanor. RSA 659:35. Therefore, it is mandatory that Moderators not allow voters to vote in the open or allow voters to take ballots outside the rail. We understand that in the past many Moderators, when confronted by a line that would require voters to wait more than fifteen minutes to vote, have allowed voters who voluntarily chose to do so, to vote in public, at tables, on benches, etc. Moderators should not allow this to occur. Rather, among other ideas provided above, Moderators should set up additional voting screens to help alleviate long waiting periods.

In the event that a person due to a disability or a health emergency cannot get to or into the polling place to cast a ballot and such person requests a ballot to vote, the Moderator may instruct such person to request an absentee ballot from the Town of City Clerk. The Town or City clerk may distribute absentee ballot applications and absentee ballots with the affidavit envelope on Election Day. The clerk may appoint an assistant who is not a candidate or a person working for a candidate to deliver and return the absentee ballot materials. In order for the absentee ballot to be counted the application must be completed with the signature as well as the affidavit envelope and submitted to the clerk or the clerk's assistant by 5:00 p.m. See RSA 657:22. The clerk in turn has until the close of the polls to deliver the absentee application and ballot to the moderator. RSA 657:23.

S. Assistance in Voting

Any voter who declares to the Moderator under oath that said voter: cannot read; or because of disability, is unable to mark his or her ballot shall, upon the **voter's choice and request:** receive the assistance of one or both of the Inspectors of Election detailed for providing assistance to voters by the Moderator or **receive assistance from a person of the voter's choice** provided that the person is not the voter's employer or union official. RSA 659:20. Both the

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person requesting assistance and the person providing assistance must complete the following oath:

Oath of Individual Registered Voter Requiring Assistance in Voting Pursuant to RSA 659:20 (This oath may be performed and affirmed to orally or by alternate forms of communication.)	
I,, do solemnly swear (or affirm) that I cannot read or that, because of disability, I am unable to mark a ballot and require assistance in voting. See RSA 659:20	
Oath of Individual Providing Assistance to an Individual Registered Voter Pursuant to RSA 659:20	
I,, do solemnly swear (or affirm) that in providing assistance to, (voter), I shall mark the ballot as directed by him/her and will not unduly influence his/her decision with respect to selecting any candidate or issue presented on the ballot and that I shall thereafter give no information regarding same.	

T. Physical Accessibility

Each polling place shall be easily accessible to all persons including persons with disabilities and elderly persons who are otherwise qualified to vote. RSA 658:9, RSA 658:9-a.

Each polling place shall have at least one voting booth which is easily accessible to elderly persons and to persons with physical disabilities. RSA 658:9, III. All polling places are required to have the accessible voting booth provided by the Secretary of State, and to set up the accessible voting system and ensure that the system is functioning properly. To the extent that the election official has any questions regarding the operation of the accessible voting system, he/she should contact the Secretary of State help line at 1-800-540-5852.

U. Exit Polling

Exit polling is not electioneering when the people taking the exit polls are clearly located so as to encounter only those who have already voted. Moderators should establish and enforce a uniform policy on where exit polling is allowed at your polling place. Where space or the route traveled by exiting voters does not accommodate exit polling within the building or where exit polling would be disruptive to the voting process, Moderators should limit exit polling to the electioneering zone outside the building. If your polling place has a separate or large exit path and polling would not be disruptive or loud, Moderators may allow exit polling within the building, but away from the exit from the voting area and away from the rail. Any problems with people conducting exit polls should be immediately brought to the attention of the Attorney

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General's Office and the exit poll supervisor. The person doing the exit polling should provide the Moderator with the name and phone number of his or her supervisor, if requested.

V. Counting

The moderator is responsible for ensuring an accurate vote count. <u>See</u> N.H. Const. Part II, Art. 32. Moderators must review RSA 659:58 through 659:70, which provides the statutory requirements for the counting process. Fundamentally, the moderator, shall oversee the counting of votes by other election officers, including the selectmen and the town clerk, and may discharge any other duties relating to the counting of votes. Moderators may appoint as many assistant election officials as is necessary. RSA 658:7. The counting of votes shall be public and conducted within the guardrail and shall not be adjourned nor postponed until it shall have been completed. No ballot shall be placed within 4 feet of the guardrail during the counting of votes.

In machine count towns/wards, the Secretary of State recommends that the moderator have assistants inspect the ballots which have been fully counted by the machine to determine whether the ballots contain any write-in votes which the machine did not count due to the voter not filling in the oval to the right of where the name was written in. This inspection should also determine whether there are any other marks on the ballot showing that a voter intended to vote for a candidate on a ballot where the voter did not fill in any ovals for that office. In reviewing these ballots, the moderator should follow a process that does not commingle these fully counted ballots with the ballots in the write-in bin. Caution must be used to ensure that only the votes not counted by the machine are added to the results.

At the completion of the counting process, the moderator should first reconcile the results following the guidelines and forms provided by the Secretary of State. Moderators have reported that it is helpful to have a volunteer accountant, CPA, math teacher, bookkeeper or some similar person who works daily with numbers to assist in performing this election night reconciliation. Once the Moderator has established that there are no inaccuracies in the results, the Moderator shall announce the final count for each office. RSA 695:70. A written copy of the results should be posted at the polling place on election night and made available at the clerk's office following the election. There are organized efforts to gather these polling place election night results and to compare them to the official results posted by the Secretary of State. It is essential that all posted and published results are accurate and identical to each other.

W. Election Return

After the tabulation of votes has been completed and the moderator has announced the results provided in RSA 659:70, the town or ward clerk shall prepare the election return in the presence of the other election officials. RSA 659:71. The town or ward clerk shall prepare the election return in duplicate on the forms supplied by the secretary of state and shall sign and shall certify such returns. RSA 659:74. The town or ward clerk shall forward one copy of the

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election return on election night by delivering it to the law enforcement agency designated by the Secretary of State. The other copy shall be kept by the town or city clerk and shall be open to public inspection at reasonable times. RSA 659:75.

X. Preservation of Ballots, Memory Cards and Results Tape from Vote Counting Machine

The general election ballots, because they are also used for federal offices, are required by federal law to be preserved for twenty-two (22) months. 42 U.S.C. 1974.

Clerks shall not return the memory card to LHS until the recount period has passed and until all recounts have been completed and all appeal periods exhausted. The last date to request a recount following the November 4, 2008 election is November 7, 2008.

Clerks shall preserve the data on the memory card for a period of 22 months following a federal election. Preserving the machine results tape fulfills this requirement. 42 U.S.C. 1974.

Y. Seal into the Ballot Storage Boxes:

- All used regular and absentee ballots
- This includes all overseas citizen, military, overseas write in, and all successfully challenged absentee ballot affidavit envelopes that were never opened. This includes spoiled or cancelled ballots
- All unused ballots

The sealed ballot boxes are placed in the custody of the Clerk, who typically moves them to his or her office when leaving the polls. Another election official or a police officer will assist the Clerk in the transfer and witness the securing of the sealed ballot boxes. Use the official cardboard ballot boxes provided by the Secretary of State. Seal the boxes using the following steps:

- 1. Seal the flaps shut with filament tape;
- 2. Use the red tamper proof evident tape provided by the Secretary of State to put strips of this tape running entirely around the box;
- 3. Stick the "Label for Resealing Ballots" on top of the box and across the red tape. Ensure the label is properly filled in.;
- 4. Stick a short piece of the red tamper proof evident tape over each end of the "Label for Resealing Ballots."

Z. Do Not Seal in the Ballot Storage Boxes:

• The Clerks or Moderator's copy of the return of votes – Each should keep a copy with them on Wednesday, November 5, 2008 following the election. If the

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Secretary of State's Office contacts you with questions on Wednesday, it is very helpful if you have immediate access to your copy of the return of votes and to your worksheets.

- The Clerks copy of the Military and Absentee Ballot Survey
- The worksheets you use to calculate the final results
- The Checklist marked and used at the election <u>See</u> RSA 659:102. The Clerk must preserve the copy as a public record for at least five years.

III. Contact Number for New Hampshire Attorney General and New Hampshire Secretary of State on Election Day

The Secretary of State's Office and the Attorney General's Office will have staff available to answer phone call questions from 6 AM until 10 PM on Election Day. After 10 PM, assistance can be obtained from either Office by contacting the New Hampshire State Police Dispatch at 271-3636. The State Police will request a call back phone number from you and contact an Assistant Attorney General who will call you back promptly.

The Attorney General's toll free election line for voters, parties, campaigns, and election officials is: 1-866-868-3703; (603) 271-3650.

The Secretary of State's phone number is 271-3242.

Please refer to the 2008-2009 Election Procedure Manual and the On-Line NHVotes election law training, which may assist in election law inquires.

The NHVotes on-line is available at: http://nhvotes.sos.nh.gov/